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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 RICHARD A. EVANS,

11 Plaintiff,

12 v.

13 R. MILAM, *et al.*

14 Defendants.
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Case No. 1:20-cv-00070-JDP

FINDINGS AND RECOMMENDATIONS TO
DENY MOTION TO PROCEED IN FORMA
PAUPERIS AND REQUIRE PAYMENT OF
FILING FEE IN FULL WITHIN TWENTY-
ONE DAYS

ECF No. 2

OBJECTIONS DUE WITHIN 14 DAYS

ORDER TO ASSIGN CASE TO DISTRICT
JUDGE

19 Plaintiff Richard A. Evans is a state prisoner proceeding without counsel in this civil
20 rights action brought under 42 U.S.C. § 1983. On January 14, 2020, plaintiff filed an application
21 to proceed *in forma pauperis* under 28 U.S.C. § 1915. ECF No. 2.

22 The Prison Litigation Reform Act provides that “[i]n no event shall a prisoner bring a civil
23 action . . . under this section if the prisoner has, on 3 or more occasions, while incarcerated or
24 detained in any facility, brought an action or appeal in a court of the United States that was
25 dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief
26 may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28
27 U.S.C. § 1915(g). Plaintiff has had three or more actions dismissed as frivolous, as malicious, or
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1 for failing to state a claim upon which relief maybe granted.¹ Plaintiff has been informed on
2 previous occasions that he is subject to § 1915(g).² Plaintiff has also not satisfied the imminent
3 danger exception to § 1915(g). *See Andrews v. Cervantes*, 493 F.3d 1047, 1053-55 (9th Cir.
4 2007). Plaintiff's cursory allegations about leaking and flooding do not show that he was in any
5 imminent, personal danger at the time of filing, and do not describe any actions of the defendants
6 or connect any of the defendants to the alleged harm.

7 Accordingly, plaintiff's *in forma pauperis* applications should be denied, and he should
8 pay the filing fee in full, since he has accrued three or more strikes and has not shown that he was
9 under imminent danger of serious physical harm at the time that this action was initiated.

10 **Order**

11 The clerk of court is directed to assign this case to a district judge who will review the
12 findings and recommendations.

13 **Findings and Recommendations**

14 Based on the foregoing, it is hereby recommended that:

- 15 1. plaintiff's *in forma pauperis* application, ECF No. 2, be denied;
- 16 2. plaintiff be required to pay the \$400 filing fee in full within twenty-one days of adoption
17 of these findings and recommendations; and
- 18 3. if plaintiff fails to pay the \$400 filing fee in full within twenty-one days of adoption of
19 these findings and recommendations, all pending motions be terminated, and this action
20 be dismissed without prejudice.

21 We submit these findings and recommendations to a district judge under 28 U.S.C. §
22 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,

24 ¹ The cases include (1) *Evans v. Cal. Dep't of Corr. & Rehab.*, No. 2:17-cv-01891-JAM-KJN (E.D.
25 Cal. 2018) (dismissed for failure to prosecute following a screening order finding that the complaint
26 failed to state a claim); (2) *Evans v. Cal. Dep't of Corr. & Rehab.*, No. 2:17-cv-01890-WBS-DB
27 (E.D. Cal. 2018) (dismissed for failure to prosecute following a screening order finding that the
28 complaint failed to state a claim); and (3) *Evans v. Suisun Police Dep't*, No. 2:17-cv-01889-KJM-
CMK (E.D. Cal. 2018) (dismissed in 2018 for failure to state a claim).

² *See Evans v. Siebel, et al.*, No. 1:19-cv-00819-LJO-SAB (E.D. Cal. 2019); *Evans v. Sherman, et al.*, No. 1:19-cv-00818-LJO-BAM (E.D. Cal. 2019).

1 Eastern District of California. Within fourteen days of the service of the findings and
2 recommendations, plaintiff may file written objections to the findings and recommendations with
3 the court and serve a copy on all parties. That document should be captioned “Objections to
4 Magistrate Judge’s Findings and Recommendations.” The district judge will review the findings
5 and recommendations under 28 U.S.C. § 636(b)(1)(C).

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7 IT IS SO ORDERED.

8 Dated: January 25, 2020


UNITED STATES MAGISTRATE JUDGE

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12 No. 205.